REMARKS

Applicant appreciates the Examiner's thorough consideration provided in the present application. Claims 1-12 are currently pending in the instant application. Claims 2-9, 11 and 12 have been withdrawn from further consideration by the Examiner. Claims 1 and 10 have been amended. Claims 1-3 and 10-12 are independent. Reconsideration of the present application is earnestly solicited.

Priority

Applicant appreciates the Examiner's indication of acceptance of the certified copy of the corresponding priority document for the present application.

Drawings

Applicant appreciates the Examiner's indication of acceptance of the formal drawings filed on October 3, 2000.

Election/Restriction

The Examiner has withdrawn claims 2-9, 11 and 12 as being directed toward non-elected subject matter. Applicant reserves the right to pursue the

patentably distinct subject matter of claims 2-9, 11 and 12 with a timely filed divisional(s) application(s).

Claim Rejections Under 35 U.S.C. § 103

Claims 1 and 10 have been rejected as being unpatentable over Iwasaki (U.S. Patent No. 5,717,965). This rejection is respectfully traversed.

In light of the foregoing amendments to the claims, Applicant respectfully submits that all of the rejections have been obviated and/or rendered moot. Without conceding the propriety of the Examiner's rejection, but merely to expedite the prosecution of the present application, Applicant has amended claims 1 and 10 to clarify the claimed invention for the benefit of the Examiner. However, Applicant submits that the foregoing amendments to the claims have not been made responsive to a proper statutory rejection relating to the patentability of the claimed invention. Accordingly, this rejection has been obviated and/or rendered moot.

With respect to claim 1, Applicant submits that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "*an image file create device for creating an image file containing the image data outputted from said imaging device and data representing the photometry*

values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device; and *recording control device for recording the image file created by said image file create device on a recording medium.*" (Emphasis Added) Accordingly, this rejection should be withdrawn.

With respect to claim 10, Applicant submits that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "imaging a subject in an amount of exposure determined on the basis of the outputted photometry values, to obtain image data representing an image of the subject, *wherein an image file is created with an image file create device, said image file containing the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device*; and recording *the image file created by said image file create device on a recording medium with a recording control device.*" (Emphasis Added) Accordingly, this rejection should be withdrawn.

Applicant submits that the references of the prior art of record relied upon by the Examiner do not teach or suggest the above-identified features of

the claimed invention. Further, the Examiner's rejection under 35 U.S.C. § 103(a) is improper and fails to establish a prima facie case of obviousness. Therefore, Applicant submits that the foregoing amendments have been made to merely clarify the claimed invention for the benefit of the Examiner and have not been made responsive to a proper statutory rejection.

In the claimed invention, the image file containing the image data and the data representing the photometry values is created by the image file create device. The created image file is recorded on the recording medium. Therefore, the image file, containing as a unit the image data and the data representing the photometry values, is recorded on the recording medium, and the image data and the data representing the photometry values are read from the recording medium as a unit.

As admitted by the Examiner in the Office Action, Iwasaki clearly fails to teach or suggest the above-described features of the claimed invention. Accordingly, this rejection should be withdrawn. The Examiner states on page 3 of the Office Action that:

> "Although not disclosed the image data is also stored in the same memory. Even if the image data is not stored in the same memory it is obvious to one of ordinary skill in the art that making a memory integral recording both the data output from the photometry device and the image data is prima facie obviousness **in the absence of new or unexpected results**. See *In re Larson*,

340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)." (emphasis added by Examiner)

First, *In re Larson* is entirely unrelated to the modification of Iwasaki proposed by the Examiner. Second, *In re Larson* does not remotely teach that "Even if the image data is not stored in the same memory it is obvious to one of ordinary skill in the art that making a memory integral recording both the data output from the photometry device and the image data is prima facie obviousness in the absence of new or unexpected results." The Examiner has admitted that the primary reference does not teach or suggest each and every limitation of the claimed invention. However, the Examiner has not provided any additional teachings, e.g., actual evidence from the prior art of record, which would suggest modifying the Iwasaki reference to read on the claimed invention. Accordingly, this rejection is improper.

Applicant respectfully submits that *In re Larson* does not stand for the premise that Examiners may make rejections based on modifications of the prior art of record that are unsubstantiated by the prior art of record. Accordingly, this rejection should be withdrawn and the present application should be permitted to Issue.

In accordance with the above amendments and remarks, Applicant respectfully submits that the claims of the instant application define over the prior art of record. Accordingly, reconsideration and withdrawal of the claim rejections are respectfully requested.

CONCLUSION

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but merely to show the state-of- the-art, no further comments are deemed necessary with respect thereto.

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Applicant respectfully petitions under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a one-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **$110.00** is attached hereto.

In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew T. Shanley, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By _____

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